Supreme Court, U.S.
FILED
SEP 2 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-136

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

ISLAMIC REPUBLIC OF IRAN; BANK MELLAT, GOMHOURI BRANCH, formerly BANK OMRAN,

Appellants,

vs.

SHAMS PAHLAVI, aka H.I.H. PRINCESS SHAMS PAHLAVI, DOES 1 through 99 inclusive,

Appellees.

ON APPEAL FROM
THE SUPREME COURT OF CALIFORNIA

MOTION OF APPELLEE TO DISMISS THE APPEAL OR, IN THE ALTERNATIVE, TO AFFIRM THE JUDGMENT

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QUESTIONS PRESENTED

Appellee Shams Pahlavi respectfully moves to dismiss this appeal or, in the alternative, to affirm the order of the California Supreme Court denying review after judgment by the Court of Appeal which affirmed dismissal of the complaint pursuant to California Code of Civil Procedure § 410.30. Appellee's motion to dismiss is made on the grounds that (1) the Court lacks jurisdiction to hear the appeal under 28 U.S.C. § 1257, and (2) the questions presented by the appeal are insubstantial. Sup.Ct.R.16. In the alternative, appellee's motion to affirm the order of the California Supreme Court is made on the grounds that (1) the decision of that Court is plainly correct, and (2) the questions presented by the appeal are so insubstantial as to need no further argument. Sup.Ct.R.16.

The Jurisdictional Statement of appellants sets forth the Constitutional provisions, federal treaty and California statute involved in this appeal. These matters will not be repeated herein.

TOPICAL INDEX

Page

Questions Presented i

Statement of the Case 2

Argument 5

A. Summary of Argument 5

B. Dismissal Of This Appeal Is Warranted 6

C. The Judgment Should Be Affirmed 7

1. Dismissal Of This Action On The Grounds Of *Forum Non Conveniens* Is Consistent With Due Process 8

2. The Algerian Accords Do Not Preclude Dismissal On The Grounds Of *Forum Non Conveniens* 10

Conclusion 12

Appendix A:

Memorandum of Decision On Motions, Superior Court of the State of California, No. WEC 070089, Filed: February 27, 1984

TABLE OF AUTHORITIES

Page

Cases

Archibald v. Cinerama Hotels
15 Cal.3d 853, 126 Cal.Rptr. 811 (1976) 9

Dames & Moore v. Regan
453 U.S. 654 (1981) 11

Great Northern Railway Co. v. Superior Court
12 Cal.App. 3d 105, 90 Cal.Rptr. 461 (1970) 3, 9

Hanson v. Denckla
357 U.S. 235 (1958) 6

Henderson v. Superior Court
77 Cal.App.3d 583, 598 (1978) 9

Ireland v. Woods
246 U.S. 323 (1918) 6

Islamic Republic of Iran v. Pahlavi
160 Cal.App.3d 620, 206 Cal.Rptr. 752 (1984) 4

Islamic Republic of Iran v. Pahlavi
62 N.Y.2d 474, 478 N.Y.S. 2d 597 (1984),
cert. den. — U.S. —, 105 S.Ct. 783 (1985) 4

Philadelphia & R. Coal & Iron Co. v. Gilbert
245 U.S. 162 (1917) 6

United States v. Belmont
301 U.S. 324 (1937) 11

Page

Statutes

California Code of Civil Procedure
§ 410.30 ..... i, 5, 6, 8
28 U.S.C.
§ 1257 i
§ 1257(1) 5, 6
§ 1257(2) 5, 6

Miscellaneous

Federal Treaty: Algerian Accords ..... passim

No. 86-136

IN THE
SUPREME COURT OF
THE UNITED STATES
October Term, 1986

ISLAMIC REPUBLIC OF IRAN; BANK MELLAT, GOMHOURI BRANCH, formerly BANK OMRAN,

Appellants,

vs.

SHAMS PAHLAVI, aka H.I.H. PRINCESS SHAMS PAHLAVI, DOES 1 through 99 inclusive,

Appellees.

MOTION OF APPELLEE TO DISMISS THE APPEAL OR, IN THE ALTERNATIVE, TO AFFIRM THE JUDGMENT

QUESTIONS PRESENTED

1. Did the California Supreme Court correctly determine that the lower court properly exercised its discretion in dismissing, on *forum non conveniens* grounds, an action involving foreign parties, facts and law having no nexus with California, but intimately related to an available alternative forum?

2. Did the California Supreme Court correctly conclude that the Algerian Accords do not preclude dismissal of this action on *forum non conveniens* grounds?

STATEMENT OF THE CASE

This collection action was brought in the Superior Court of California by the Islamic Republic of Iran and Bank Mellat, the latter being wholly owned by the Islamic Republic (collectively "appellants"), against Princess Shams Pahlavi ("appellee"), the sister of the late Shah of Iran and a citizen of Iran. Appellants' claims relate to a $5 million loan obtained by appellee in Iran in 1973 from the predecessor of Bank Mellat to finance city planning and building construction in Mehrshahr, Iran. (C.T. 2-3.)[1] Due to delays in the development of the property, the loan was renegotiated numerous times between 1973 and November of 1978, when the parties entered into an agreement in Iran which provided for complete repayment of the loan by transferring portions of the Mehrshahr land to the bank for its development and sale. (C.T. 411-420.)

Shortly after this November 1978 agreement, the Shah of Iran was deposed. The new revolutionary government subsequently confiscated all of Princess Shams' property in Iran, including all of the Mehrshahr land. The record does not show, and appellee does not know, whether these lands and improvements have been sold in satisfaction of the loan or remain in appellants' hands. The new revolutionary government also seized control of all banks, including Bank Mellat.

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[1] References to Clerk's Transcript on Appeal will be cited (C.T.) followed by the page number.

Appellants filed this action in 1981, contending that appellee is in default on the loan, and attempted to serve appellee by publication. Princess Shams initially responded by filing a motion to quash service and later filed an alternative motion to dismiss on the grounds of *forum non conveniens*. (C.T. 387-449.) After hearing both motions on November 30, 1983, the trial court requested supplemental briefs on, among other things, the applicability of the Algerian Accords and Princess Shams' amenability to Iranian jurisdiction. In response, Princess Shams provided the court with additional briefing and a copy of the pertinent provisions of the Iranian Code of Civil Procedure. Notably, nothing in the record before the trial court raised any issue concerning the validity of the Algerian Accords as the supreme law of the land or the constitutionality of the California *forum non conveniens* statute. Indeed, appellants' contentions focused there, as throughout this action, on the elements of California's law of *forum non conveniens* and on the meaning and scope of the terms of the Algerian Accords.

On February 27, 1984, the trial court issued a memorandum decision holding that the action should be dismissed on grounds of *forum non conveniens*. (Appendix A-1-8.) In reaching its decision, the court applied not only the California law of *forum non conveniens*, as enunciated in *Great Northern Railway Co. v. Superior Court*, 12 Cal.App. 3d 105, 90 Cal.Rptr. 461 (1970), but also the clear terms of the Algerian Accords. The court expressly found that this suit had no relationship to California, that it would be an unneeded burden on California courts, that there existed no legal obstacle to bringing the suit in Iran and that nothing in the Algerian Accords required California to accept the case. In short, the court concluded that "the law — forum

non conveniens — mandates dismissal . . ." (Appendix A-8.)

On December 30, 1985, the Court of Appeal affirmed the decision of the trial court, simply changing the order for dismissal with prejudice to a dismissal without prejudice. In its two-part opinion, that appellate court ruled that the Algerian Accords do not bar dismissal on the grounds of *forum non conveniens* and that the trial court properly exercised its discretion in dismissing the action. (Jurisdictional Statement, Appendix B.)

In quoting the Accords, the appellate court held that the treaty applies only to lawsuits brought against relatives of the Shah seeking recovery of particular " 'property and assets belonging to Iran' " and not to a claim for "a money judgment for damages for breach of contract." The appellate court moreover concluded that the Accords "extended only to 'sovereign immunity principles or . . . the act of state doctrine . . .'." With respect to the defense of *forum non conveniens*, the Court of Appeal found that " 'there is no special category of Iranian litigant.' (*Islamic Republic of Iran v. Pahlavi*, 160 Cal.App.3d at p. 626.)"[2]

In the second part of its opinion, the appellate court found that the trial court did not abuse its discretion in dismissing the action on the ground of *forum non conveniens*. Indeed, the court considered and rejected appellants' contentions that Iran is not a jurisdictionally

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[2] In so construing and applying the terms of the Algerian Accords, the Court of Appeal specifically joined with the highest court of New York, which had previously dismissed, on *forum non conveniens* grounds, an action by the Islamic Republic against the Shah's widow. (*Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d 474, 484-487, 478 N.Y.S.2d 597 (1984), *cert. den.*, ___ U.S. ___, 105 S.Ct. 783 (1985).

available alternative forum, that an Iranian judgment would be unenforceable for lack of personal jurisdiction and/or a perceived lack of due process and that the trial court abused its discretion in not staying the action. (Jurisdictional Statement, Appendix B 7-10.)

On May 1, 1986, the California Supreme Court, en banc, denied appellants' petition for review.

ARGUMENT

A. Summary of Argument

Pursuant to Supreme Court Rule 16, appellee moves for dismissal and/or affirmance of the judgment below on the grounds that this appeal is not within the Court's jurisdiction and that it fails to present a substantial federal question requiring full briefing and a hearing.

Appellants have improperly invoked this Court's jurisdiction under 28 U.S.C. § 1257(1) and (2). Under subsection (1), appellate review is available only if the state court has held a statute or treaty of the United States invalid. Neither party ever raised, nor did the courts below ever address, the validity of the Algerian Accords, and no decision was ever rendered against that treaty's validity. Appellate review is likewise unavailable under subsection (2) since neither party challenged the validity of California Code of Civil Procedure § 410.30 on the ground of its being repugnant to the Constitution, treaties or laws of the United States.

In sum, full briefing and a hearing are not warranted here. The decisions of the trial court, appellate court and California Supreme Court have uniformly and correctly rejected the arguments now raised by appellants.

B. Dismissal Of This Appeal Is Warranted

As an initial matter, this appeal is improper since neither 28 U.S.C. § 1257(1) nor (2) is applicable. Under subsection (1), review is available only "where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity." Neither party ever raised, nor did the California courts question, the validity of the Algerian Accords as a treaty of the United States government. From the very outset, the trial court assumed that it had to apply the Accords as the law of the land and only after supplemental briefing did it find that the Accords do not apply to this particular claim.

Appellate review is also unavailable under subsection (2) since the validity of California's *forum non conveniens* statute was never at issue. Appellants instead contended that dismissal was inappropriate under § 410.30 of the California Code of Civil Procedure on the ground that Iran is not an available alternative forum. Such a claim was specifically rejected by the trial court. Appeal does not lie, and review is only by certiorari, if it is claimed that there is an erroneous exercise of authority under a valid statute. (*Philadelphia & R. Coal & Iron Co. v. Gilbert*, 245 U.S. 162 (1917); *Ireland v. Woods*, 246 U.S. 323 (1918); *Hanson v. Denckla*, 357 U.S. 235 (1958).

A separate and independent ground for dismissal is the lack of a substantial federal question. As discussed in greater detail in the following section, the law in this case leaves no room for dispute. The balance of factors relevant to a *forum non conveniens* determination weigh heavily in favor of Iran and against California. Moreover, after reviewing the Iranian Code of Civil Procedure, the trial court quite correctly concluded that appellants' arguments

respecting the unavailability of an alternative forum were not well-founded since that Code permits service in Iran in a manner similar to that attempted in California, *i.e.*, by publication. (Appendix A-3, 7.)

The question sought to be raised under the Algerian Accords is similarly without merit. The Accords by their terms do not apply to a collection action in which a money judgment for damages is sought for breach of contract. In addition, the Accords subject Iran, like any other litigant in American courts, to all principles of law normally applied by those courts, with the sole exception being the doctrines of sovereign immunity and act of state, neither of which was a basis for the decisions below. As the Court of Appeal thus found, the Accords "in no way disturb or even bear upon the judgment below." (Jurisdictional Statement, Appendix B-4.)

C. The Judgment Should Be Affirmed

No substantial federal question requiring full briefing and a hearing has been raised by appellants. The argument that appellants are entitled, as a matter of constitutional right, not only to access to American courts — which has been available — but also to a trial on the merits, is unwarranted and unsupported. Three successive California courts have carefully weighed and balanced all possible public and private interests before dismissing the action. Accordingly, the Order Denying Review in the Supreme Court of the State of California after judgment by the Court of Appeal should be affirmed.

1. Dismissal Of This Action On The Grounds Of *Forum Non Conveniens* Is Consistent With Due Process

It is undisputed that the California law of *forum non conveniens* requires the availability of an alternative forum as a prerequisite to either dismissal or stay under California Code of Civil Procedure § 410.30. Despite appellants' contentions to the contrary, both the trial and appellate courts expressly acknowledged and applied this rule.

The trial court in fact specifically requested supplemental briefing on, among other things, appellee's amenability to Iranian jurisdiction, and examined applicable provisions of the Iranian Code of Civil Procedure before rejecting appellants' claim that appellee is not amenable to Iranian jurisdiction simply because she is absent from the country and will not enter an appearance there. (Appendix A-3, 7.) The court's conclusion was expressly predicated upon Sections 95 and 100 of the Iranian Code of Civil Procedure, which set forth the procedures for service in a foreign country and for service by publication. On the basis of these articles, both the trial and appellate courts concluded that, despite appellee's anticipated unwillingness to appear in Iran, the Islamic Republic could proceed against her without her cooperation in Iran just as it attempted to do in California.

The real thrust of appellants' argument is that, even though an alternative forum clearly exists, Iran is not a "suitable" forum since its judgment may not be enforceable in American courts. The appellate court rejected this contention, finding that "[a]t this stage and on this record, such concern is 'purely speculative' . . .". (Jurisdictional Statement, Appendix B-9.) In addition, the potential

enforceability of a judgment is merely one of many factors which must be weighed in deciding a *forum non conveniens* motion. *See Great Northern Railway v. Superior Court*, 12 Cal.App.3d 105, 112-113, 90 Cal.Rptr. 461 (1970). It alone is not dispositive.

Appellants' fear that a judgment rendered by their own courts will not be enforceable in the United States is a problem of their own making. Appellants are not ordinary citizen-litigants, but rather the government of Iran and presumably have it within their power to provide a system of justice which is compatible with due process. As the appellate court concluded, such "speculative concern about the impartiality of the tribunal it will provide constitutes no basis for concluding that the trial court abused its discretion in remitting plaintiff to its own courts." (Jurisdictional Statement, Appendix B-9.)

Equally without merit is appellants' contention that the order of dismissal was an abuse of discretion and a violation of due process. This argument is based upon an erroneous reading of *Archibald v. Cinerama Hotels*, 15 Cal.3d 853, 126 Cal.Rptr. 811 (1976). While the court there generally alluded to dismissal being appropriate only in an "exceptional case," the court actually held that dismissal is inappropriate only when the plaintiff is a bonafide California resident. *Id.* at 857-859; *See also Henderson v. Superior Court*, 77 Cal.App.3d 583, 598, 142 Cal.Rptr. 478 (1978). That is certainly not the case here. Moreover, appellants' concern with the availability of a hearing in this country is premised entirely upon their speculation that the Iranian judgment will be unenforceable. This concern simply does not and could not establish that dismissal of an action having so little relationship to California, and so

great a nexus with Iran, constituted a violation of due process.

2. The Algerian Accords Do Not Preclude Dismissal On The Grounds Of *Forum Non Conveniens*

It is undisputed that the Algerian Accords, a treaty entered into by the United States, is binding as the supreme law of the land. However, appellants' contention that the Accords somehow require the courts of California to accept jurisdiction of this action is wholly misplaced. The Accords do not preclude dismissal on *forum non conveniens* grounds. First, as the Court of Appeal found, the Accords by their terms do not apply to actions such as here. Second, even if the Accords did apply to this action, nothing in the Accords bars an American court from exercising its discretion to dismiss an action on grounds of inconvenient forum.

The portions of the Accords pertinent here are in paragraphs 12 and 14. Paragraph 12 unambiguously provides that the United States will freeze assets "of the former Shah or of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran" and paragraph 14 simply prescribes a waiver of the defenses of sovereign immunity and the act of state doctrine "in any litigation of the kind described in paragraph 12." Whatever confusion appellants seek to create, the fact remains that the present case is not an action for restitution of property as belonging to Iran; rather, it is a collection action in which a money judgment for damages is sought for breach of contract.

Likewise, the Accords in no way impact or bar application of the law of *forum non conveniens*. The only defenses affected by the Accords are the specified defenses of sovereign immunity and the act of state doctrine, neither of which was a basis for the decision below. There is certainly nothing in the language of the Accords which remotely suggests that the Islamic Republic is "promised" an American forum for this action.

The cases consistently relied upon by appellants here and below to support their arguments are irrelevant. *Dames & Moore v. Regan*, 453 U.S. 654 (1981) and *United States v. Belmont*, 301 U.S. 324 (1937), simply demonstrate the broad power of the federal government to resolve claims between foreign sovereigns and United States nationals in order to facilitate peaceful relationships with revolutionary governments. In *Dames & Moore v. Regan*, for instance, this Court upheld the authority of the President to suspend claims of U.S. nationals against the Islamic Republic and to order the resolution of such claims through binding arbitration in an Iran-United States Claims Tribunal. *United States v. Belmont* merely affirms the power of the federal government to accept assignment of recaptured Soviet assets held by Americans or American institutions to facilitate payment of outstanding claims of U.S. nationals.

The executive power to make such binding commitments is not at issue here, and the authorities cited by appellants do not provide any conceivable basis for disregarding the carefully limited language of the Accords and implying a guarantee of a United States forum for a suit by the Iranian government against its own national. As the Court of Appeal reasonably concluded, the Accords "in no way disturb or even bear upon the judgment below." (Jurisdictional Statement, Appendix B-4.)

CONCLUSION

This Court should either dismiss the appeal or, in the alternative, affirm the judgment below. Appellants have improperly invoked the Court's appellate jurisdiction and have failed to raise a substantial federal question warranting full briefing and a hearing. The judgment below is plainly correct and should be affirmed.

August 28, 1986.

Respectfully submitted,

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APPENDIX A

FILED
FEB 27, 1984
JOHN J. CORCORAN, County Clerk
By L GOLD, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

ISLAMIC REPUBLIC No. WEC 070089

v

PAHLAVI

MEMORANDUM OF DECISION ON MOTIONS

The Islamic Republic of Iran is suing the former Princess Shams Pahlavi, sister of the deposed Shah, for repayment of a multi-million dollar loan that was made to her and which the Islamic Republic was obliged to repay.

A. *Motion to quash.*

Defendant moves to quash service of summons by publication. This motion is denied.

Preliminarily, a motion to quash service of summons is the proper means to test the propriety of the court's ex parte order for service by publication. It is not necessary for the defendant to make a motion to reconsider the ex parte order.

The affidavits and declarations before the court in support of the ex parte motion for service by publication

were adequate on their face to support the order in every respect.

They revealed that a cause of action exists against defendant. There is no need to recite the entire basis of plaintiff's cause of action, but a few points are significant. Defendant has a beneficial interest in real property located in Los Angeles County. Although there is no connection between the proceeds of the loan which is the basis of the suit and the real property in Los Angeles County, there are more than minimal contacts in addition to the real property which give this court jurisdiction (see *Straffer v. Heitner*, 433 U.S. 186): defendant is the registered owner in Los Angeles County of 3 automobiles; and she owned and conveyed several parcels of real estate in this county over a period of months sufficiently recent to the date of the declarations.

Further, the affidavits and declarations show adequate diligence in attempting to gain service. Where actual notice was received — as is the case here — this court must follow the mandate of liberality in order to "uphold the jurisdiction of the court." (See *Pasadena Medi-Center v. Superior Court*, 9 Cal.3d 773, 778.)

B. *Motion to dismiss — forum non conveniens.*

Defendant's claim that this court ought to dismiss the case pursuant to C.C.P. section 410.30 is well taken. It is clear that "the interest of substantial justice" requires this case to be heard in Iran and not in Los Angeles, California.

In *Great Northern Ry. Co. v. Superior Court*, 12 Cal.App.3d 105, the court carefully articulated the 25 points that ought to be weighed in determining whether the doctrine of forum non conveniens should be applied. In following those points, it becomes clear that the motion ought to be granted.

1. "*The amenability of the defendant to the personal jurisdiction in the alternative forum.*" It is clear that defendant is *not* amenable to the jurisdiction of the Islamic Republic of Iran. Under California case law defendant must show a suitable alternative forum. (See *Archibald v. Cinerama Hotels,* 15 Cal.3d 853, 861.) Absent such, this court could not grant the motion.

The court asked counsel for their views as to whether, under the law of Iran, plaintiff would be subject to jurisdiction in Iran even if she were not amenable. Their answers to this inquiry are attached to this memorandum as exhibits.

The defendant presents citations that under the law of the Islamic Republic she would be subject to suit in Iran. The Islamic Republic was unable to give an answer in the time allotted. This court is, therefore, aware of no authority that would foreclose plaintiff from proceeding against defendant in Iran without her cooperation.

Furthermore, Article 14 of the Algerian Accords, signed by the United States on January 19,1981, ending the notorious hostage crisis, which Accords plaintiff alleges to be the "law of the land" and binding on this court, provides "Iranian decrees and judgments relating to such assets [of the Shah and his close relatives] should be enforced by such courts [of the United States] in accordance with United States law." This appears to mean that the courts of the United States would be bound to enforce Iranian judgments related to the Shah's close relatives.

The parties have shown no bar to this litigation in Iran.

2. "*The relative convenience to the parties and witnesses of trial in the alternative forum.*" Nothing pertaining to the facts of this case took place outside of Iran, except that one of the banks involved was in New York. Most of the

witnesses would be in Iran. The fact that some of the Princess's witnesses are outside of Iran and would be unwilling to return there for trial is certainly not prejudicial to plaintiff.

3. "*The differences in conflict of law rules applicable in this state and in alternative forum.*" All concede that this court would have to apply the law of Iran — laws developed in a wholely (sic) alien culture and legal system to ours. The difficulties of finding and using this law in a case involving a suit against the sister of a former absolute monarch would be monumental.

Certainly the plaintiff's response to the court's inquiry (exhibit herein) did not encourage this court that the law of Iran would be easy to find.

4. "*The principal place of business of the defendant.*" The domicile, residence or location of the Princess Shams is unknown. So far as is known she is not a citizen of the United States, but may live in this jurisdiction from time to time. She, of course, no longer resides in Iran.

5. "*Whether the ... transaction ... out of which the action arose exists, occurred in, or had a substantial relationship to this state.*" The transaction has no relationship to California.

6. "*Whether any party would be substantially disadvantaged in having to try the action (b) in this state or (b) in the forum in which the moving party asserts it ought to be tried.*" The only party disadvantaged by a trial in Iran is the moving party herself.

7. "*Whether any judgment entered in the action would be enforceable by process issued or other enforcement proceedings undertaken in this state.*" Under the Algerian Accords it would appear that an Iranian judgment would be enforceable in the United States.

8. "*Whether witnesses would be inconvenienced if the action were prosecuted (a) in this state or (b) in the forum in which the moving party asserts it ought to be prosecuted.*" The court has no information on this subject. It is obvious that there are witnesses in Iran and there may be witnesses in other parts of the world. Wherever this case is tried, witnesses will be inconvenienced.

9. "*The relative expense to the parties of maintaining the action (a) in this state and (b) in the state in which the moving party asserts the action ought to be prosecuted.*" It is not known how the expenses would differ in the two jurisdictions.

10. "*Whether a view of premises by the trier of fact will or might be necessary ....*" It would be unnecessary to "view the premises," since there really are none.

11. "*Whether prosecution of the action will or may place a burden on the courts of this state which is unfair, inequitable or disproportionate in view of the relationship of the parties or of the cause of action to this state.*" The parties in this case, as has been noted, have no relationship to this state, and the people of this state have no interest in this suit. The burden of the case has already been enormous, and I anticipate that this burden will grow.

12. "*Whether the parties participating in the action have a relationship to this state which imposes upon them an obligation to participate in judicial proceedings in the courts of this state.*" Only defendant has any relationship to California, but only barely enough to get jurisdiction here.

13. "*The interest ... of this state in providing a forum for ... the parties ....*" California has no interest whatever in providing a forum for this case. It will be a drain upon our precious judicial resources.

14. "*The interest ... of this state in regulating the situation or conduct involved.*" The suffering of people everywhere should concern us all. But, as a system of justice established primarily to provide a rule of law for the people of the state of California, the disputes between the current regime in Iran and the family of a deposed monarch of Iran are plainly none of our business.

15. "*The avoidance of multiplicity of actions and inconsistent adjudications.*" I know of no possibility of any such problem by this suit proceeding in Iran where it belongs.

16. "*The relative ease of access to sources of proof.*" The sources of proof in this case are more readily available in Iran than here.

17. "*The availability of compulsory process for attendance of witnesses.*" As noted already, this is a mixed problem. It is clear that no matter where the suit proceeds many of the witnesses will be beyond the processes of the court trying the cause.

18. "*The relative advantages and obstacles to a fair trial.*" Iran has experienced a recent revolution, and in such a milieu a fair trial as we understand that concept, could be difficult. But, if this factor is to be charged against anyone, it ought to be plaintiff.

19. "*The public interest in the case.*" We have no interest in this case, other than idle curiosity.

20. "*Whether administrative difficulties and other inconveniences from crowded calendars and congested courts are more probable in the jurisdiction chosen by plaintiff.*" Undoubtedly the courts of California are struggling under the civil and criminal caseload burdens, and adding this case to the load will not help.

21. "*Whether imposition of jury duty is imposed upon a community having no relation to the litigation.*" This will be so should the trial stay here.

22. "*The injustice to, and burden on, local courts and taxpayers.*" This case will be an unneeded burden upon us in California.

23. "*The difficulties and inconvenience to defendant, to the court, and to jurors hearing the case, attending presentation of testimony by deposition.*" As noted, witnesses are a problem wherever it is tried. California is certainly no better than Iran in these respects.

24. "*Availability of the forum claimed to be more appropriate.*" As noted already, so far as this court is aware, there exists no legal inhibition to the bringing of this suit in Iran.

25. "*The other practical considerations that make trial of a case convenient, expeditious and inexpensive.*" There are none that favor California.

Upon evaluation of every factor there is no reason to leave this case here.

Plaintiff contends the Algerian Accords require California to accept this case. The contrary is true. The Accords only require us to accept the case "in accordance with United States law." The law — forum non conveniens — mandates dismissal and the doctrine of forum non conveniens is not exempted under Article 14 of the Accords.

This case is dismissed with prejudice.

Dated: Feb. 27, 1984

s/s DAVID M. ROTHMAN, JUDGE

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February 24, 1984

Hon. David M. Rothman
Los Angeles Superior Court
West Department E
1725 Main Street
Santa Monica, California 90401

Re: Islamic Republic of Iran, et al., v. Shams Pahlavi, et al., L.A. Superior Court, WEC 070089

Dear Judge Rothman:

This letter is submitted on behalf of plaintiffs in response to the Court's inquiries directed to the parties on February 8, 1984.

The Court requested that counsel address the following questions:

> Under the law of the Islamic Republic of Iran can a valid judgment be obtained against the Princess Shams without her being amenable to personal service or within the jurisdiction of the Republic? If the law of the Islamic Republic provides that the applicable law is that which was in effect at the time of the making of the contract, what was that law? In answering please include citations and English language quotations of the authority

relied upon. If the question cannot be answered, please explain why it cannot be answered.

At the present time we are unable to provide the Court with authoritative answers to these questions. Our own sources and reference materials on the contemporary Iranian legal system are incomplete and we have not had sufficient time to obtain the necessary information from the responsible officials in the Islamic Republic or in the Interests Section in Washington, D.C.

As stated to your Honor's Law Secretary on Wednesday, February 23, 1984, I expect that we will be able to provide definitive answers to the Court's questions after my meeting with Dr. Hamid Varasteh at the Interests Section on Friday, February 25, 1984. Dr. Varasteh is legal advisor to the Bureau of International Legal Services which supervises all litigation involving the Islamic Republic of Iran and has been a practicing attorney with over 30 years experience. With Dr. Varasteh's assistance we will be able to supply the Court with definitive answers on the questions of substantive and procedural Iranian law. Therefore, I request the opportunity to supplement this response by March 2, 1984.

It is respectfully submitted, however, that irrespective of the answer to the question concerning jurisdiction and service of process under the law of the Islmaic (sic) Republic, it would be error to conclude that the Islamic Republic is a viable alternative forum for this litigation.

The Uniform Foreign Money Judgment Recognition Act (the "Act") was enacted in California in 1967. California Code of Civil Procedure, Sections 1713.1 to 1713.8. Under applicable provisions of the Act, in particular Sections 1713.5(a)(1)-(6), it is not certain that California courts would recognize a money judgment rendered in the Islamic

Republic against defendants herein. Thus, even if jurisdiction could be obtained under Iranian law, the net effect of dismissal here on grounds of *forum non conveniens* would be to subject plaintiffs to an uncertain fate in enforcing the judgment in California — the situs of leviable property. Accordingly, such dismissal would be improper under controlling law.

Very truly yours,

ATKINSON, ANDELSON, LOYA,
RUDD & ROMO

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February 23, 1984

HAND DELIVERY

The Honorable David M. Rothman
Los Angeles County Superior Court
1725 Main Street, Dept. E
Santa Monica, California 90401

Re: Islamic Republic of Iran v. Shams Pahlavi, et al. Case No. WEC 70089

Dear Judge Rothman:

This is in response to the Court's letter of February 8, 1984, requesting that the parties respond to certain questions addressed therein.

The question posed by the Court is as follows:

> "Under the law of the Islamic Republic of Iran can a valid judgment be obtained against the Princess Shams without her being amenable to personal service or within the jurisdiction of the Republic?"

The Court also posed a corollary question as follows:

> "If the law of the Islamic Republic provides that the applicable law is that which was in effect

at the time of the making of the contract, what was that law?"

The answer to the first question is found in the Civil Procedure Code of Iran. The most recent edition of the Civil Prcedure Code of Iran, insofar as we are aware, is dated as of November 1970 and was translated and published by Musa Sabi in 1972. This is the same Code of Civil Procedure which presently is being used by the Iranian Desk of the United States Department of State and we are advised that there have been no substantive changes to the provisions discussed herein since that time. Therefore, the corollary question posed by the Court appears moot in that the applicable law has not changed since the date of making of the contract at issue in this case which was 1973.

Chapter 3 of the Civil Procedure Code of Iran, Articles 89 through 110, governs service of the complaint. Attached as Exhibit "A" is a true and correct copy of these Code provisions. (The translator has differentiated complaints in civil cases from criminal cases by referring, in the former, to the word "plaint" and in the latter to the word "complaint". Article 70, fn. 5.) Basically, these Code provisions provide for service much in the same way as service may be effected in lawsuits filed in the United States. Articles 90 and 91 provide that service of the plaint is to be made through a bailiff on the defendant in person or if the bailiff is unable to personally serve the plaint on the defendant, service may be made at the defendant's residence on relatives or servants. In the event that service cannot be effected within Iran in accordance with one of the methods mentioned above, service by publication is provided for pursuant to Article 94. Article 95 governs service in a foreign country. That section states:

> "The service of the plaint in a foreign country shall be made through the Iranian political or Consular functionaries. The said functionaries shall send the plaints and their supplements through the diplomatic functionaries or any other possible means to the defendants and shall report the proceedings through the Ministry of Foreign Affairs for the information of the court. In case where there is no political agent or Consulate in the country of residence of the defendant, this action shall be taken by the Ministry of Foreign Affairs in any way it deems fit and proper."

Article 100 provides for service by publication.

> "Where the plaintiff may not determine the residence of the defendant and it is not known also to the office of the court, the contents of the plaint and its attachments shall, on the request of the plaintiff and the orders of the court, be published three times successively in the Official Gazette and one of the other widely-circulated newspapers which is commissioned by the Ministry of Justice for publishing official notices in the capital and the provinces (Shahrestan). The said notice shall specify that if service is required thereafter through publication, it shall be published only once in a newspaper and its period of grace is 10 days. . . ."

Article 109 provides that in cases where service has not been made in accordance with the provisions of the Code, the court shall annul the service unless the defendant has responded in writing or attended the court session, in which case he shall not have the right to object as to the method of service. Pursuant to Article 111, the defendant must reply

to the claims of the plaintiff within 10 days from the date of receipt of the plaint. Article 118 enlarges the period within which a defendant is required to respond in cases where his residence is outside the territorial jurisdiction of the court. With respect to the United States, the enlarged period is three months (Article 118). Where the residence of the defendant is unknown, the period to respond is three months from the date of publication of the last notice (Article 119). Articles 130 and 164 through 171 pertain generally to default judgments.

Based upon our examination of the Civil Procedure Code of Iran, the answer to the Court's question is that a judgment valid under Iranian law can be obtained against Princess Shams without her being amenable to personal service or within the jurisdiction of the Republic.

Very truly yours,

s/s Steven W. Weston
of McCUTCHEN, BLACK,
VERLEGER & SHEA

SWW/lkl
Attachment

cc: Thomas W. Kovacich, Esq.
(w/attachment)

CIVIL PROCEDURE CODE OF IRAN

With Amendments Approved on Nov., 1970

Translated
and
Published
by
MUSA SABI
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PROLOGUE

In every civilization law is interwoven with the prevailing religion, customs, usages, mores and folklore. They play an important role in shaping the laws of a society. Iranian law is influenced by both Islamic teachings and the civil law of the European continent. Anglo-Saxon law is foreign to Iranian legal concepts.

After the conquest of Iran by the nomadic Arabs in the 7th Century A.D. Islam became the state religion of Iran. Religion and state were not seperated (sic) and Islamic teachings became the basis of Iranian laws and the dispensation of justice. Islam is not simply a code of moral teachings: it also contains provisions for government, administration, health, social affairs and other aspects of life.

After the Islamic conquest, and even as recently as half a century back, disputes in Iran were settled not by a machinery of justice but by the clergy, without the

intervention of the Government. Certain cases dealing with public order were dealt with by the governors, subgovernors and civil servants appointed by the Government. In penal cases the Government officials obtained the opinion of the clergy and acted accordingly.

This state of affairs continued until Iran adopted the system of Constitutional Monarchy in 1905. The constitutional Law and the subsequent Supplementary Constitutional Law were ratified by Mozaffar-ed-Din Shah and endorsed by his Crown Prince, Mohammad Ali Mirza, later called Mohammad Ali Shah.

The Iranian Parliament which came into existence in the reign of the dying Monarch Mozaffar-ed-Din Shah, was confronted with many problems. During this period the clergy continued to carry out the judicial function and handled all civil cases but it had no jurisdiction over foreign inhabitants of Iran who were subject to Consular jurisdiction.

Around about 1906 a court was set up known as the Pecuniary and Property Court (Mahkameh Melki va Naghdi) and at the same time a criminal court and a branch of the Court of Appeals was also formed. The High Court did not exist except on paper. Every now and then a meeting of the Majlis-e-Tamiz was called on the invitation of the Minister of Justice to act as the High Court.

Up to February 1927 when then Minister of Justice Akbar Davar dissolved the Ministry of Justice the country was passing through a period of transition and confusion. From the standpoint of the judiciary the state of affairs was not very clear. There was no time to promulgate laws and regulations for running the country. All laws were enforced on an experimental basis and a considerable part of justice was dispensed through the clergy.

Chapter Three — On Proceedings Concerning the Plaint Until the Court Session

Treatise I — On Service of the Plaint

Article 89

Chief Clerk of the office of the court shall, within two days from the date of receipt of the plaint or in case the plaint is defective, from the date the defects have been remedied, keep in record one copy of the same with its attachments in a special file prepared for the case and submit the duplicate copy along with its attachments to the bailiff for service on the defendant and enter on all the copies of the plaint the branch of the court that shall take cognizance and the name of the bailiff and the date on which the plaint has been submitted to the bailiff.

*Article 90

Service of the plaint and its attachments must be made through a bailiff and the bailiff is required to serve the same within two days on the defendant in person and obtain a receipt thereof on the duplicate copy. In case of refusal of the defendant to accept the papers, he shall record his refusal in the servicesheet and return the same to the court.

Note 1 - Service of the documents relating to a suit may be made either on the residence or the place of work. For service on the place of work the employees of the ministries, government organizations, companies and banks and institutions for public services and the municipalities may send the documents to the personnel office of the relevant section or the immediate chief of the employee and the said persons shall be responsible for execution of service according to the provisions

and return the documents within a maximum period of 10 days.

Note 2 - In cases where a wife is not residing in the house of her husband, service shall be made either at her residence or her place of work.

Article 91

Where the bailiff cannot hand over the plaint to the defendant in person, he shall make the service at the defendant's residence on any one of his relatives or servants provided that, in the opinion of the bailiff, the age of such person is such that he can understand the importance of the documents and provided that there exists no clash of interests between the defendant and the person receiving the documents.

*Article 92

If the said persons mentioned in the foregoing two Articles are illiterate, their thumb impressions shall be taken at the foot of the servicesheet and where they cannot give a receipt, the bailiff shall record this point in the servicesheet and hand over the plaint and its attachments to them on his own responsibility and return the servicesheet to the court.

*Article 93

Where the persons mentioned in Article 91 refuse to accept the documents concerning a suit, the bailiff shall write a notice addressed to the defendant containing the following points and paste it on the door of the residence or the place of the defendant:

1 - Name and particulars of the plaintiff and the defendant.

2 - The date when the bailiff came to the locality for service.

3 - Refusal of the persons residing in the locality to accept the documents.

4 - Invitation to the defendant to contact the office of the court which shall take cognizance of the suit, to receive the plaint and its attachments and in case the invitation is to attend court session, the day and time of the court session.

He shall record the above proceedings in the servicesheet and return it along with the documents to the court.

*Article 94

In case where none of the persons mentioned in Articles 90 and 91 are in the locality, the bailiff shall write this fact at the foot of the servicesheet and return the documents to the office of the court. Also, he shall prepare a notice consisting of points 1, 2 and 4 described in the above Article as well as the fact that at the time the bailiff attempted for service, nobody was in the locality, and shall affix it at the door of the residence of the defendant. Moreover, he shall publish the notice once in the Official Gazette or in one of the widely-circulated newspapers which has been commissioned to publish the official notices in the capital and the provinces ((Shahrestan)). In the notice the contents of the plaint and the fact the notice had been affixed at the door of the residence of the defendant shall also be mentioned. If within a month from the date of publication of the notice, the defendant does not contact the office of the court for inspection of the plaint, the service of the plaint shall be regarded as having been completed. Nonappearance of the defendant in the office of the court should be certified by the Chief Clerk of the office of the court. The plaintiff may apply that before the publication of the notice, the plaint

and its attachments may be sent to the locality of the defendant once again.

Note - Publication of the notice in the newspaper is for the service of the contents of all kinds of plaints and their supplements but the publication is not required for service in other stages.

*Article 95

The service of the plaint in a foreign country shall be made through the Iranian political or Consular functionaries. The said functionaries shall send the plaints and their supplements through the diplomatic functionaries or any other possible means to the defendants and shall report the proceedings through the Ministry of Foreign Affairs for the information of the court. In case where there is no political agent or Consulate in the country of residence of the defendant, this action shall be taken by the Ministry of Foreign Affairs in any way it deems fit and proper.

Article 96

The date of refusal of the defendant to accept the documents in respect of Article 90, the date of service of the documents on the persons described in Article 91, the date of affixing the notice on the door of the residence of the defendant in respect to one-month period from the date of publication of the notice in the newspaper in respect of Article 94 shall be regarded as the date of service on the defendant.

*Article 97

The bailiff shall record the following proceedings in the first and second copy of the servicesheet clearly and sign the same:

1 - His name and particulars clearly and legibly.

2 - Name of the person on whom the service of the plaint was made, determining his relationship with the defendant.

3 - Place and date of service specifying the day, the month and the year, in words.

Article 98

Where it becomes known that the place of residence specified by the plaintiff in the plaint is not the place of residence of the defendant or it has changed before the service and the bailiff has also not been able to locate it, he shall record the fact at the foot of the servicesheet and return the documents to the office of the court. In such a case the provisions of Article 85 shall be applicable except in case where the residence of the defendant has been determined according to Article 1010 of the Civil Code, in which case action shall be taken in accordance with the provisions specified in Articles 91-94.

Article 99

In case where the plaintiff has specified the residence address of the defendant other than the correct address, the defendant may inform of his actual residence to the court. In such a case the service of the documents shall be made on the address the defendant has so specified.

Article 100

Where the plaintiff may not determine the residence of the defendant and it is not known also to the office of the court, the contents of the plaint and its attachments shall, on the request of the plaintiff and the orders of the court, be published three times successively in the Official Gazette and one of the other widely-circulated newspapers which is

commissioned by the Ministry of Justice for publishing official notices in the capital and the provinces ((Shahrestan)). The said notice shall specify that if service is required thereafter through publication, it shall be published only once in a newspaper and its period of grace is 10 days. The plaintiff may put the notice in other publications also but if the case is decided in his favor he cannot claim the expenses of this notice as part of the damages from the defendant.

The defendant, whose residence is not determined and who is informed through notice in the publications, may inform the court of his residence. In such a case the service of the copies of documents and their attachments shall be made on the address specified by him. Where the plaintiff comes to know about the address of the defendant after the publication of the notice in the newspapers, he may also make an application for the service of the plaint to be made on his address.

*Article 101

Service on all the Government departments and organizations affiliated to the Government, Social Service Institutions, those institutions whose capital is owned wholly or partly by the Government and likewise on the municipalities shall be made in the manner that the Chief Clerk shall write a letter to the institution concerned for service of the suit and shall enclose the documents concerning the suit and shall send it through a bailiff. The bailiff shall submit the enclosures to the officer-in-charge of the department of the addressee or his deputy and shall obtain his signature on the duplicate copy of the servicesheet. In case the said officer or his deputy refuses to accept, the bailiff shall record his refusal in accordance with Article 93 and shall return it to the office of the court.

In the above case the refusal of the said officer or his deputy from accepting the documents concerning the suit and refusal to issue receipt shall be regarded as non-compliance of duty.

Note - In lawsuits concerning the branches of departments, companies and the institutions belonging to or affiliated with the Government, service shall be made on the officer-in-charge of the relevant branch.

*Article 102

In lawsuits concerning all the legal entities, the service of the plaint and its supplements shall be made on the director or his deputy. Where the bailiff cannot make the service of the plaint on the director personally or on his deputy or one of the signatories, he shall make the service on the officer-in-charge of the organization. The provisions of Articles 90, 93 and 94 shall be taken into consideration while making service on such persons.

Note 1 - In lawsuits subject matter of this Article, where service of copies of the documents is not possible on the specified address, service of the copies of the documents shall be made on the last address registered with the Registrar of Companies.

Note 2 - In lawsuits concerning bankruptcy, service of the plaint and its supplements shall be made on the Liquidation Department of the liquidator.

Note 3 - In lawsuits concerning wound-up companies which do not have a liquidator, service of the copies of the documents

shall be made on the last director of the company before its winding up.

Article 103

In lawsuits in respect of residents of a certain place, whether a village, city or county of a city, whose number is not confined, service of one copy of the plaint shall be made on the person or persons whom the plaintiff introduces as his opponent(s). The other copy shall be submitted to the villageman or the municipality of the locality and one copy of the plaint shall be affixed on the wall of a public place of the locality. Besides, the contents of the plaint and its attachments shall be published in accordance with the following Article.

*Article 104

Where the partners in a real estate or Qanat ((water channel)) or acquaduct or in a right to share the water of a river and deep wells and all the rights concerning immovable property are party to a suit and their number is more than 15, service of the plaint and its supplements shall be made, on the request of the plaintiff, on two persons from among the partners who have a larger number of shares. Besides, the contents of the plaint and its attachments shall be published in accordance with Article 100.

*Article 105

If the defendant resides within the territorial jurisdiction of another court, the service of the plaint shall be made by the office of that court through the bailiffs or other possible means. In case the defendant does not reside within the territorial jurisdiction of the court, service shall be made through the police, Gendarmerie, the County ((Bakhshdari)), Chief of the House of Equity, the Villageman, Chairman of the Village Council or by

registered mail and the said persons shall be responsible, according to the provisions, for the correct execution of service of the copies of documents. In places where none of these means are available, action shall be taken through publication in the manner specified in Article 100. Where the defendant is in jail or in a detention house, the service of the plaint and other documents concerning the suit shall be made through the office of the jail on the said defendant.

Article 106

A bailiff cannot be charged with the duty of making service in the following instances:

1 - On the persons related to the bailiff by blood or marriage up to the third class from second degree.

2 - In cases where there is a criminal or civil suit in a court of justice between the bailiff and the defendant or where there had been a criminal case in the past and in case of a misdemeanor more than two years and in case of a felony more than five years have not passed from the date the case was finalized.

Article 107

Each one of the parties to a dispute or their attorneys may, for the purpose of service of the documents concerning the dispute, choose a place in a city where the said court is located and inform of the same to the office of the court. In such case service of all the documents concerning the dispute shall be made on the said place.

*Article 108

Where one of the parties to the dispute changes the place where the service of the first documents was made or the

place which he had chosen for the service of the documents, he is required immediately to inform the office of the court of the new address with its particulars. As long as he shall not inform of the same the documents shall be sent to the previous address and in case there is no person at the address or there are persons but do not want to give a receipt, the bailiff shall mention this fact in the servicesheet and return it to the court. In such a case the said documents shall be considered as to have been served and shall remain in the office of the court. Any one to whom service had to be made may not be excused on the ground of ignorance.

Article 109

In case service of the plaint and its attachments has not been made in accordance with the Articles of this Treatise, the court shall annul the service unless the defendant has given his written pleading or if the service was to attend the court session and he attended the court, in that case he shall not have the right to object as to the method of service.

Article 110

None of the parties to the dispute and the attorneys-at-law may, considering their temporary journeys as change of address, request the service of the documents concerning their disputes to be made on the said address. The notice concerning the change of address shall be accepted when the place of residence has really been changed in accordance with Article 1004 of the Civil Code. If it becomes known to the court that the notice of change of address was not true, it shall regard the service made on the previous address with due consideration of the contents of Article 108, as to have been completed.

Treatise II — Legal Proceedings from Service of the Plaint Until Fixing of the Court Session

Article 111

The defendant shall reply to the claims of the plaintiff within 10 days from the date of receipt of the plaint and shall enclose certified copies of all the documents and proofs and he may also, in his written reply, claim the documents to be forged or ask for the inspection of the locality or for an expert opinion and present all kinds of objections and defenses which in his opinion, are effective against the case of the plaintiff. He shall take into consideration the contents of Clause 6 or Article 72 and Articles 74-78 of the Civil Procedure Code in his reply. The reply of the defendant and its enclosures shall be submitted in duplicate copies and in case of plurality of the plaintiffs one extra copy besides one copy for each of the plaintiffs. If the reply of the defendant or its enclosures are in one copy only, the office of the court shall have the right to prepare extra copies for the plaintiffs and charge double than the expenses from the defendant and collect the same through the bailiff.

Article 112

After the receipt of the reply of the defendant the Chief Clerk of the office of the court shall file into record one copy of the reply with all its enclosures and shall make service of the other copies with the enclosures within a period of two days through the bailiff.

*Article 113

Regulations regarding service of the documents concerning the case on the defendant shall also be observed in every

respect for service on the plaintiff except in case of publication of the notice in the newspaper.

Article 114

Plaintiff shall in every reply observe the provisions of Article III and if he wants to support his defensive arguments by new documents or evidence, he shall enclose copies of those documents and names of witnesses in every copy and shall submit it to the office of the court within a period of 10 days.

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BY

MUSA SABI, 210 SHAH AVE. TEHRAN

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

Date: February 27, 1984
HONORABLE DAVID M. ROTHMAN JUDGE
NONE Deputy Sheriff
WEC 70089
L. GOLD Deputy Clerk
NONE Reporter

ISALMIC (sic) REPUBLIC

vs.

PRINCESS SHAMS PAHLAVI

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER

This matter of Defendant's motion to quash is denied.

Defendant's motion to dismiss — forum non conveniens is granted.

This case is dismissed with prejudice.

A copy of this minute order and the Court's Memorandum of Decision on Motions is mailed by U.S. Mail this date to the following:

ATKINSON, ANDELSON, LOYA, etc.
ATTN: THOMAS E. KOVACICH
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McCUTCHEN, BLACK, VERLEGER, & SHEA
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SUSAN J. TRIPLETT
600 Wilshire Boulevard
Los Angeles, Ca 90017

MINUTES ENTERED
2-27-84
COUNTY CLERK